BORA LASKIN LAW LIBRARY
3 1761 10082861 5

CASES AND MATERIALS
ON
TRADE REGULATION
EDITED BY W. FRIEDMANN

ARCHIVES

Storage
KE
1599
.F75
1954

CASES AND MATERIALS

ON

TRADE REGULATION

Edited

by

W. FRIEDMANN
School of Law
University of Toronto
Toronto

1954

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/casesothermateri00frie

CASES AND MATERIALS ON TRADE REGULATION

TABLE OF CONTENTS

Page

INTRODUCTORY NOTE

PART I - RESTRAINT OF TRADE UNDER THE COMMON LAW:

Mogul Steamship Company, Limited v. McGregor, Gow & Co..... 1

Vancouver Malt and Sake Brewing Company, Limited v. Vancouver Breweries, Limited 3

Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Company 6

Allen Manufacturing Co. v. Murphy 9

Herbert Morris, Limited v. Saxelby 11

Thorne v. Motor Trade Association 15

British Motor Trade Association v. Salvadori 20

PART II - LEGAL CONTROL OF BUSINESS AND INDUSTRY:

A - Legislative Materials

Report of the Committee to Study Combines Legislation 23a

The Canadian Criminal Code 26

Combines Investigation Act 26

The Sherman Antitrust Act of July 2, 1890 30

Section 7 of the Clayton Act of 1914 31

B - Economic Background to Anti-Monopoly Law

Berle & Means, The Modern Corporation and Private Property. 31

Weldon, Consolidations in Canadian Industry, 1900-1948 36

Rubber Products 38

Goldenberg, Electrical Wire and Cable Products 41

Canada and International Cartels 46

C - Philosophy of Anti-Monopoly Legislation

Report of the Committee to Study Combines Legislation 52

Kahn, Standards for Anti-Trust Policy 58

Galbraith, American Capitalism 61

Taylor, Industry and Combines 63

Andras, Labour and Combines 64

Lilienthal, Big Business: A New Era 65

Page

D - Judicial Interpretations

Proprietary Articles Trade Association v. Attorney General For Canada 69

Weidman v. Schragge 72

North Western Salt Company, Limited v. Electrolytic Alkali Company, Limited 79

Container Materials Ltd. v. The King 81

Rex v. Eddy Match Co. Ltd. et al. 84

Philco Products Ltd. et al. v. Thermionics Ltd. et al. 87

United States v. Aluminum Co. of America 89

Kahn, A Legal and Economic Appraisal of the "New" Sherman and Clayton Acts 94

Adams, The "Rule of Reason": Workable Competition or Workable Monopoly? 102

PART III - GOVERNMENT ENTERPRISE:

Friedmann, The Theory of Public Industrial Enterprise 105

Hodgetts, The Public Corporation in Canada 109

Financial Administration Act 119

Trans-Canada Air Lines Act 121

The Power Commission Act 125

The Income Tax Act 130

Michaud v. C.N.R. Co. 130

The City of Halifax v. Halifax Harbour Commissioners 133

Oatway v. Canadian Wheat Board 139

North and Wartime Housing Ltd. v. Madden 142

Recorder's Court et al. v. Canadian Broadcasting Corp. 145

Gooderham & Worts Ltd. v. Canadian Broadcasting Corp. 148

Tamlin v. Hannaford 149

Hodgetts, The Public Corporation in Canada 151

Friedmann, Law and Social Change in Contemporary Britain .. 152

PART IV - PUBLIC CONTROL OF BUSINESS:

Railway Act 154

Colebourne v. Harrop et al. 162

Canadian Pacific Ry. Co. v. Toronto Transportation Commission 162

Canadian National Ry. Co. v. Bell Telephone Co. of Canada and Montreal L.H. & P. Cons. 164

TABLE OF CONTENTS - PAGE 3

	Page
Canadian Pacific Railway v. The Province of Alberta et al.	166
Gov'ts of Alta., Sask., and Man. v. Canadian Pacific Railway Company	169
Montreal Park and Island Rway. Co. v. Chateaugay and Northern Rway. Co.	172
Canadian Electrical Association v. Canadian National Railways	173
Toronto-St. Catharines Transport Ltd. v. The City of Toronto and Canadian National Railway Company	175
Schiffner et al. v. Canadian Pacific Railway Company	177

INTRODUCTORY NOTE

The cases and materials collected in this volume have been grouped under four major sections.

The first section deals with the principles developed by the common law in regard to restrictive agreements. The cases reported in the section do not, however, deal with Conspiracy, as the cases dealing with this subject are handled either in the course on Torts or in the course on Labour Law.

The second section deals with legislative attempts to control restraints of trade, and with judicial interpretations of this legislation. In this section a considerable amount of comparative American material is included because the principles, and to some extent the wording, of the relevant American and Canadian legislation are very similar. This section is closely linked with the problem of exclusive protection of certain economic interests as provided by patent law, trade-mark law, and copyright law. But with the exception of one case dealing with the relation of patent right and anti-monopoly law, no cases or materials on this branch of the law are included as it is dealt with in a special course linked with the course on Regulation of Trade.

The third section deals with government enterprise. Here the government itself, through semi-autonomous and publically controlled enterprises, takes over the operation of certain industries, utilities or other business enterprises instead of merely controlling or supervising them.

The last section chooses, out of the welter of regulatory and supervisory government agencies, the Board of Transport Commissioners and its functions under the Railway Act. The excerpts from the Railway Act reproduced in that section, and the decisions illustrating the powers and functions of the Board, have been chosen so as to illustrate the most characteristic aspects of this type of supervisory agency: its power to make regulations regarding the conduct and operation of an enterprise; its administrative and judicial functions; its powers in regard to the making and the terms of the contracts made by the enterprises under its control, whether these enterprises be public or private.

It should be emphasized that there are numerous other public agencies with functions comparable to those of the Board of Transport Commissioners. The purpose of this section is not to give a survey of the many types of government controls of trade but to illustrate the legal methods chosen by a contemporary democracy preserving the basic patterns of private enterprise while recognizing the need for public controls. The third section dealing with government enterprise and the last section dealing with government control of trade illustrate the two most important means chosen by Canada to assert the public interest in a mixed economy, in which private enterprise predominated.

W. F.